

# COMMITTEE REPORT

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## MR. PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 25, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 4-2-6-1 IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2001]: Sec. 1. As used in this chapter, and
- 4 unless the context clearly denotes otherwise:
- 5 (1) "Agency" means an authority, a board, a branch, a bureau, a
- 6 commission, a committee, a council, a department, a division, an
- 7 office, a service, or other instrumentality of the executive,
- 8 including the administrative, department of state government. The
- 9 term includes a body corporate and politic set up as an
- 10 instrumentality of the state that chooses to be under the
- 11 jurisdiction of the state ethics commission. The term does not
- 12 include any of the following:
- 13 (A) The judicial department of state government.
- 14 (B) The legislative department of state government.
- 15 (C) A state educational institution (as defined in
- 16 IC 20-12-0.5-1).
- 17 (D) A political subdivision.
- 18 (E) A private nonprofit government related corporation.
- 19 (2) "Appointing authority" means the chief administrative officer
- 20 of an agency. The term does not include a state officer.
- 21 (3) "Assist" means to:
- 22 (A) help;
- 23 (B) aid;
- 24 (C) advise; or
- 25 (D) furnish information to;
- 26 a person. The term includes an offer to do any of the actions in

1 clauses (A) through (D).

2 (4) "Business relationship" means dealings of a person with an  
3 agency seeking, obtaining, establishing, maintaining, or  
4 implementing:

5 (A) a pecuniary interest in a contract or purchase with the  
6 agency; or

7 (B) a license or permit requiring the exercise of judgment or  
8 discretion by the agency.

9 (5) "Commission" refers to the state ethics commission created  
10 under section 2 of this chapter.

11 (6) "Compensation" means any money, thing of value, or financial  
12 benefit conferred on, or received by, any person in return for  
13 services rendered, or for services to be rendered, whether by that  
14 person or another.

15 (7) "Employee" means an individual, other than a state officer,  
16 who is employed by an agency on a full-time, a part-time, a  
17 temporary, an intermittent, or an hourly basis. The term includes  
18 an individual who contracts with an agency for personal services  
19 for more than thirty (30) hours a week for more than twenty-six  
20 (26) weeks during any one (1) year period.

21 (8) "Employer" means any person from whom a state officer or  
22 employee or the officer's or employee's spouse received more than  
23 thirty-three percent (33%) of the officer's, employee's, or spouse's  
24 nonstate income in a year.

25 (9) "Financial interest" means an interest:

26 (A) in a purchase, sale, lease, contract, option, or other  
27 transaction between an agency and any person; or

28 (B) involving property or services.

29 The term includes an interest arising from employment or  
30 prospective employment for which negotiations have begun. The  
31 term does not include an interest of a state officer or employee in  
32 the common stock of a corporation unless the combined holdings  
33 in the corporation of the state officer or the employee, that  
34 individual's spouse, and that individual's unemancipated children  
35 are more than one percent (1%) of the outstanding shares of the  
36 common stock of the corporation. The term does not include an  
37 interest that is not greater than the interest of the general public  
38 or any state officer or any state employee.

39 (10) "Information of a confidential nature" means information:

40 (A) obtained by reason of the position or office held; and

41 (B) which:

42 (i) a public agency is prohibited from disclosing under  
43 IC 5-14-3-4(a);

44 (ii) a public agency has the discretion not to disclose under  
45 IC 5-14-3-4(b) and that the agency has not disclosed; or

46 (iii) the information is not in a public record, but if it were,  
47 would be confidential.

48 (11) "Person" means any individual, proprietorship, partnership,  
49 unincorporated association, trust, business trust, group, limited  
50 liability company, or corporation, whether or not operated for

profit, or a governmental agency or political subdivision.

(12) "Political subdivision" means a county, city, town, township, school district, municipal corporation, special taxing district, or other local instrumentality. The term includes an officer of a political subdivision.

(13) "Property" has the meaning set forth in IC 35-41-1-23.

(14) "Represent" means to do any of the following on behalf of a person:

(A) Attend an agency proceeding.

(B) Write a letter.

(C) Communicate with an employee of an agency.

(15) "Special state appointee" means a person who is:

(A) not a state officer or employee; and

(B) elected or appointed to an authority, a board, a commission, a committee, a ~~counsel~~, **council**, a task force, or other body designated by any name that:

(i) is authorized by statute or executive order; and

(ii) functions in a policy or an advisory role in the executive (including the administrative) department of state government, including a separate body corporate and politic.

(16) "State officer" means any of the following:

(A) The governor.

(B) The lieutenant governor.

(C) The secretary of state.

(D) The auditor of state.

(E) The treasurer of state.

(F) The attorney general.

(G) The superintendent of public instruction.

(17) The masculine gender includes the masculine and feminine.

(18) The singular form of any noun includes the plural wherever appropriate.

SECTION 2. IC 4-2-6-4 IS AMENDED TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2001]: Sec. 4. (a) The commission may do any of the following:

(1) Upon a vote of four (4) members, or upon the written request of the governor, initiate and conduct an investigation.

(2) Receive and hear any complaint which alleges a violation of this chapter, a rule adopted under this chapter, or any other statute or rule ~~governing~~ **establishing standards of** official conduct of state officers, employees, or special state appointees.

(3) Obtain information and, upon a vote of four (4) members, compel the attendance and testimony of witnesses and the production of pertinent books and papers by a subpoena enforceable by the circuit or superior court of the county where the subpoena is to be issued.

(4) Recommend legislation to the general assembly relating to the conduct and ethics of state officers, employees, and special state appointees, including whether additional specific state officers or employees should be required to file a financial disclosure statement under section 8 of this chapter.

- 1 (5) Adopt rules under IC 4-22-2 to implement this chapter.
- 2 (6) Prescribe and provide forms for statements required to be filed
- 3 under this chapter.
- 4 (7) Accept and file information:
  - 5 (A) voluntarily supplied; and
  - 6 (B) that exceeds the requirements of this chapter.
- 7 (8) Inspect financial disclosure forms.
- 8 (9) Notify persons who fail to file forms required under this
- 9 chapter.
- 10 (10) Develop a filing, a coding, and an indexing system required
- 11 by this chapter and IC 35-44-1-3(f).
- 12 (11) Conduct research.
- 13 (12) Prepare interpretive and educational materials and programs.
- 14 (b) The commission shall do the following:
  - 15 (1) Act as an advisory body by issuing advisory opinions to
  - 16 interpret this chapter, the commission's rules, or any other statute
  - 17 or rule ~~governing~~ **establishing standards of** official conduct
  - 18 upon:
    - 19 (A) request of:
      - 20 (i) a state officer or a former state officer;
      - 21 (ii) an employee or a former employee;
      - 22 (iii) a person who has or had a business relationship with an
      - 23 agency; or
      - 24 (iv) a special state appointee; or
    - 25 (B) motion of the commission.
  - 26 (2) Conduct its proceedings in the following manner:
    - 27 (A) When a complaint is filed with the commission, the
    - 28 commission may:
      - 29 (i) reject, without further proceedings, a complaint that the
      - 30 commission considers frivolous or inconsequential;
      - 31 (ii) **reject, without further proceedings, a complaint that**
      - 32 **the commission is satisfied has been dealt with**
      - 33 **appropriately by an agency;**
      - 34 (iii) upon the vote of four (4) members, determine that the
      - 35 complaint does not allege facts sufficient to constitute a
      - 36 violation of this chapter or the code of ethics and dismiss the
      - 37 complaint; or
      - 38 ~~(iii)~~ (iv) forward a copy of the complaint to the attorney
      - 39 general, the prosecuting attorney of the county in which the
      - 40 alleged violation occurred, the state board of accounts, a
      - 41 state officer, the appointing authority, or other appropriate
      - 42 person for action, and stay the commission's proceedings
      - 43 pending the other action.
    - 44 (B) If a complaint is not disposed of under clause (A), a copy
    - 45 of the complaint shall be sent to the person alleged to have
    - 46 committed the violation.
    - 47 (C) If the complaint is not disposed of under clause (A), or
    - 48 when the commission initiates an investigation on its own
    - 49 motion or upon request of the governor, the commission shall
    - 50 promptly investigate the alleged violation. If, after the

preliminary investigation, the commission finds by a majority vote that probable cause exists to support an alleged violation, it shall convene a public hearing on the matter within sixty (60) days after making the determination. The respondent shall be notified within fifteen (15) days of the commission's determination. ~~Commission records~~ **The commission's evidence** relating to a ~~preliminary an~~ investigation ~~are~~ **is** confidential until the earlier of:

- (i) the time the respondent is notified of the hearing; or
- (ii) the time the respondent elects to have the records divulged.

However, the commission may acknowledge the existence and scope of an investigation or that the commission did not find probable cause to support an alleged violation.

(D) If a hearing is to be held, the respondent may examine and make copies of all evidence in the commission's possession relating to the charges. At the hearing, the charged party shall be afforded appropriate due process protection consistent with IC 4-21.5, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses.

(E) After the hearing, the commission shall state its findings of fact. If the commission, based on competent and substantial evidence, finds by a majority vote that the respondent has violated this chapter, a rule adopted under this chapter, or any other statute or rule ~~governing~~ **establishing standards of** official conduct of state officers, employees, or special state appointees, it shall state its findings in writing in a report, which shall be supported and signed by a majority of the commission members and shall be made public. The report may make a recommendation for the sanctions to be imposed by the appointing authority or state officer for the violation, including:

- (i) **a letter of counseling;**
- (ii) **a reprimand;**
- ~~(ii)~~ **(iii) a suspension with or without pay; or**
- ~~(iii)~~ **(iv) the dismissal of an employee.**

(F) If the commission, based on competent and substantial evidence, finds by a majority vote a violation of this chapter, a rule adopted under this chapter, or any other statute or rule ~~governing~~ **establishing standards of** official conduct of state officers, employees, or special state appointees, the commission may also take any of the actions provided in section 12 of this chapter.

(G) The report required under clause (E) shall be presented to:

- (i) the respondent;
- (ii) the appointing authority or state officer of the employee, former employee, or special state appointee; and
- (iii) the governor.

(H) The commission may also forward the report to any of the

following:

- (i) The prosecuting attorney of each county in which the violation occurred.
- (ii) The state board of accounts.
- (iii) The state personnel director.
- (iv) The attorney general.
- (v) A state officer.
- (vi) The appointing authority.
- (vii) Any other appropriate person.

(I) If the commission finds the respondent has not violated a code or statutory provision, it shall dismiss the charges.

(3) Maintain an index of conflict of interest disclosures received by the commission under IC 35-44-1-3.

(c) Notwithstanding IC 5-14-3-4(b)(8)(C), the records of the commission concerning the case of a respondent that are not confidential under subsection (b)(2)(C) shall be available for inspection and copying in accordance with IC 5-14-3.

SECTION 3. IC 4-2-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. (a) The following persons shall file a written financial disclosure statement:

- (1) The governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, and state superintendent of public instruction.
- (2) Any candidate for one (1) of the offices in subdivision (1) who is not the holder of one (1) of those offices.
- (3) Any person who is the appointing authority of an agency.
- (4) The director of each division of the department of administration.
- (5) Any purchasing agent within the procurement division of the department of administration.
- (6) An employee required to do so by rule adopted by the commission.

(b) The statement shall be filed with the commission as follows:

- (1) ~~No~~ **Not** later than February 1 of every year, in the case of the state officers and employees enumerated in subsection (a).
- (2) Before filing a declaration of candidacy under IC 3-8-2, petition of nomination under IC 3-8-6, or declaration of intent to be a write-in candidate under IC 3-8-2-2.5, or before a certificate of nomination is filed under IC 3-8-7-8, in the case of a candidate for one (1) of the state offices.
- (3) Not later than sixty (60) days after employment or taking office, unless the previous employment or office required the filing of a statement under this section.
- (4) Not later than thirty (30) days after leaving employment or office, unless the subsequent employment or office requires the filing of a statement under this section.

The statement must be made under affirmation.

(c) The statement shall set forth the following information for the preceding calendar year or, in the case of a state officer or employee who leaves office or employment, the period since a previous statement

1 was filed:

- 2 (1) The name and address of any person known:
  - 3 (A) to have a business relationship with ~~an~~ **the agency of the**
  - 4 **state officer or employee or the office sought by the**
  - 5 **candidate; and**
  - 6 (B) from whom the state officer, candidate, or the employee,
  - 7 or that individual's spouse or unemancipated children received
  - 8 a gift or gifts having a total fair market value in excess of one
  - 9 hundred dollars (\$100).
- 10 (2) The location of all real property in which the state officer,
- 11 candidate, or the employee or that individual's spouse or
- 12 unemancipated children has an equitable or legal interest either
- 13 amounting to five thousand dollars (\$5,000) or more or
- 14 comprising ten percent (10%) of the state officer's, candidate's, or
- 15 the employee's net worth or the net worth of that individual's
- 16 spouse or unemancipated children. **An individual's primary**
- 17 **personal residence need not be listed, unless it also serves as**
- 18 **income property.**
- 19 (3) The names and the nature of the business of the employers of
- 20 the state officer, candidate, or the employee and that individual's
- 21 spouse. ~~The state need not be listed as an employer.~~
- 22 (4) The ~~name of~~ **following information about** any sole
- 23 proprietorship owned or professional practice operated by the
- 24 state officer, candidate, or the employee or that individual's
- 25 spouse: ~~and~~
  - 26 (A) **The name of the sole proprietorship or professional**
  - 27 **practice.**
  - 28 (B) The nature of the business.
  - 29 (C) **Whether any clients are known to have had a business**
  - 30 **relationship with the agency of the state officer or**
  - 31 **employee or the office sought by the candidate.**
- 32 (5) The name of any partnership of which the state officer,
- 33 candidate, or the employee or that individual's spouse is a member
- 34 and the nature of the partnership's business.
- 35 (6) The name of any corporation (other than a church) of which
- 36 the state officer, candidate, or the employee or that individual's
- 37 spouse is an officer or a director and the nature of the
- 38 corporation's business.
- 39 (7) The name of any corporation in which the state officer,
- 40 candidate, or the employee or that individual's spouse or
- 41 unemancipated children own stock or stock options having a fair
- 42 market value in excess of ten thousand dollars (\$10,000). A time
- 43 or demand deposit in a financial institution or insurance policy
- 44 need not be listed.
- 45 (8) The name and address of the most recent former employer.
- 46 (9) Additional information that the person making the disclosure
- 47 chooses to include.

48 Any such state officer, candidate, or employee may file an amended  
 49 statement upon discovery of additional information required to be  
 50 reported.

(d) A person who:

- (1) fails to file a statement required by rule or this section in a timely manner; or
- (2) files a deficient statement;

upon a majority vote of the commission, is subject to a civil penalty at a rate of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

(e) A person who intentionally or knowingly files a false statement commits a Class A infraction.

SECTION 4. IC 4-2-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 13. (a) Subject to subsection (b), a state officer or employee shall not retaliate or threaten to retaliate against an employee **or a former employee** because the employee **or former employee** did any of the following:

- (1) Filed a complaint with the commission.
- (2) Provided information to the commission.
- (3) Testified at a commission proceeding.

(b) Notwithstanding subsection (a), a state officer or an employee may take appropriate action against an employee who took any of the actions listed in subsection (a) if the employee:

- (1) did not act in good faith; or
- (2) knowingly or recklessly provided false information or testimony to the commission.

SECTION 5. IC 4-2-6-14 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 14. A person may not do any of the following:**

**(1) Knowingly or intentionally induce or attempt to induce, by threat, coercion, suggestion, or false statement, a witness or informant in a commission proceeding or investigation to do any of the following:**

- (A) Withhold or unreasonably delay the production of any testimony, information, document, or thing.**
- (B) Avoid legal process summoning the person to testify or supply evidence.**
- (C) Fail to appear at a proceeding or investigation to which the person has been summoned.**
- (D) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.**



- 1           **(2) Make, present, or use a false record, document, or thing**  
2           **with the intent that the record, document, or thing appear in**  
3           **a commission proceeding or investigation to mislead a**  
4           **commissioner or commission employee.**

(Reference is to SB 25 as introduced.)

**and when so amended that said bill be reassigned to the Senate Committee on Ethics.**

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GARTON                      Chairperson